



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0408]

San Francisco International Airport Ground Transportation Rules; Petition for Determination of Preemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of petition for determination of preemption; request for comments.

SUMMARY: FMCSA requests comments on a petition submitted by the American Bus Association, Inc. (ABA) and the United Motorcoach Association, Inc. (UMA) requesting a determination that certain vehicle inspection requirements for ground transportation operators imposed by the San Francisco International Airport (SFO) on passenger-carrying motor vehicles in interstate commerce are preempted by Federal law. FMCSA requests comments in response to this petition.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]**

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2018-0408 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the *Privacy Act* heading below.

FOR FURTHER INFORMATION CONTACT: Tracy M. White, Enforcement and Litigation Division; FMCSA Office of Chief Counsel; Telephone: (202) 493-0349; E-mail: Tracy.White@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0408), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a

mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA-2018-0408" in the "Keyword" box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: DOT solicits comments from the public to better inform its preemption determinations. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2018, the ABA and the UMA submitted a petition to FMCSA requesting a determination that the SFO vehicle inspection requirement is preempted by Federal law. According to the petition, the Airport Commission of the City and County of San Francisco has adopted Rules and Regulations to govern the general conduct of the public, tenants, employees, and commercial users of SFO as their activities relate to the possession, management, supervision, operation, and control of the Airport. The current Rules and Regulations became effective on January 1, 2018 and contain provisions that govern commercial ground transportation operations (Rule 4.7). The petition states that under Rule 4.7, transportation companies that pick up and drop off passengers at SFO must apply for a Ground Transportation Operating Permit and that to obtain a permit, companies must first be licensed with the California Public Utilities Commission or have been granted Operating Authority by FMCSA for out-of-state carriers. The petition states that SFO's website provides notice of a requirement that, upon application for a Ground Transportation Operating Permit and annually thereafter, ground transportation vehicles must be inspected by airport mechanics. An offsite inspection is allowed, with fees attached, for fleets of 25 or more vehicles. The petition also alleges that while the SFO website includes a "San Francisco International Airport Vehicle Safety Inspection Checklist," neither the checklist nor Rule 4.7 identifies the standards used to determine whether a particular vehicle component has passed or failed the inspection, nor is there any indication as to what overall score is necessary for a commercial motorcoach to pass such an inspection.

While the petition states that all vehicles operating at SFO are required to display a transponder and permit-specific decals, the petition seeks a preemption determination concerning only the vehicle inspection requirement.

Applicable Law

Section 31141 of title 49 of the United States Code prohibits States from enforcing a law or regulation on CMV safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) has the same effect as a regulation prescribed under 49 U.S.C. 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations (FMCSRs); (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation 49 U.S.C. § 31141(c)(1).

If the Secretary decides that a State law or regulation has the same effect as a regulation prescribed under 49 U.S.C. 31136, the State law or regulation may be enforced. 49 U.S.C. § 31141(c)(2). If the Secretary decides that a State law or regulation is less stringent than a regulation prescribed under 49 U.S.C. § 31136, the State law or regulation may not be enforced. 49 U.S.C. § 31141(c)(3). If the Secretary decides that a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under 49 U.S.C. § 31136, the State law or regulation may be enforced unless the Secretary decides that the State law or regulation (1) has no safety benefit; (2) is incompatible with the regulation prescribed by the Secretary; or (3) would cause an unreasonable burden on interstate commerce. 49 U.S.C. § 31141(c)(4). To determine whether a State law or regulation will cause an unreasonable burden on interstate

commerce, the Secretary may consider the cumulative effect that the State's law or regulation and all similar laws and regulations of other States will have on interstate commerce. 49 U.S.C. § 31141(c)(5). The Secretary's authority under 49 U.S.C. § 31141 is delegated to the FMCSA Administrator pursuant to 49 CFR § 1.87(f).

Request for Comments

Although preemption under 49 U.S.C. § 31141 is a legal determination reserved to the judgment of the Agency, FMCSA seeks comments on any issues raised in the petition or otherwise relevant ones. The Agency has placed the petition in the docket.

Issued on: May 3, 2019.

Raymond P. Martinez,
Administrator.

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